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ROOM H-405, U.S. CAPITOL
(202) 225-4121

U.S. HOUSE OF REPRESENTATIVES
PERMANENT SELECT COMMITTEE
ON INTELLIGENCE
WASHINGTON, DC 20515

Executive Registry
86- 3562

September 18, 1985

Honorable William J. Casey
Director of Central Intelligence
Washington, D.C. 20505

Dear Mr. Casey:

Under the Equal Access to Justice Act (5 U.S.C. 504; 28 U.S.C. 2412) as amended by the recently enacted "Equal Access to Justice Act Amendments" (Public Law 99-80), a party prevailing in a lawsuit or other adversary proceeding against a federal agency may recover certain fees and other expenses (including attorney fees) if the position maintained by the agency in administrative and judicial proceedings is found to have been "substantially unjustified." Any award of such fees and other expenses against an agency must be paid from funds available to that agency.

The Committee requests that it be notified whenever an award of fees and other expenses is made against the Central Intelligence Agency (or another department or agency acting on its behalf) under Section 504 of Title 5, or Section 2412 of Title 28, of the United States Code.

With best wishes, I am

Sincerely yours,



Lee H. Hamilton
Chairman



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THE WHITE HOUSE

WASHINGTON

November 8, 1984

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

The authorities of the Equal Access to Justice Act (Title II of Public Law 96-481) expired on September 30, 1984, for all cases initiated after that date. While I strongly support the reauthorization of the Act and have worked closely with the Congress to that effect, I have today withheld my approval of the recently passed bill (H.R. 5479) reauthorizing the Act because certain of its amendments are unacceptable to the Administration. It is my hope and expectation that an acceptable reauthorization of the Act will be passed by the Congress early next year and that this reauthorization will apply retroactively to covered cases initiated on or after October 1, 1984.

Pending the reauthorization of the Equal Access to Justice Act next year, I am directing all agency heads to take the following actions.

First, agency heads shall ensure that the appropriate offices and personnel in their agencies understand that the Administration remains firmly committed to the policies underlying the Equal Access to Justice Act and that the failure to obtain an acceptable reauthorization of the Act this year should in no way be interpreted as a reduction in that commitment. In this regard, agency heads shall again review the procedures used by their agencies to ensure that agency positions are "substantially justified" within the meaning of the Act. Special attention shall be given to those agency positions that affect small businesses.

Second, agencies shall accept and retain on file any applications for awards of fees and expenses pursuant to section 203 of the Act (5 U.S.C. 504) and shall continue to provide an appropriate assistance in making such applications. Agencies will not, of course, be in a position to rule on these applications until the Act is reauthorized, but otherwise shall continue to accept such applications and provide necessary assistance as if the Act were in force.



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Third, as for awards relating to judicial proceedings under section 204 of the Act, agencies shall continue to accept and retain on file any demands for settlement of claims for such awards even though such claims (for cases initiated on or after October 1, 1984) cannot be filed in court until the Act is reauthorized. Once the Act is reauthorized, such claims shall then be reviewed by the agency in accordance with the terms of the reauthorized Act.

The above measures will ensure that the policies underlying the Equal Access to Justice Act will continue in effect until the Act is reauthorized and that the protections afforded to litigants by the Act -- particularly to small businesses -- will not be denied during the period between the Act's expiration and its reauthorization.

Ronald Reagan